

Local Law NO 1 of 2025, a Local Law Amending Local Law #7 of 1990, Site Plan Review, to Regulate Solar Energy Systems, including Battery Storage Systems, in the Town of Whitehall.

Section 1: SOLAR ENERGY SYSTEMS

All Solar Energy Systems installed in the Town of Whitehall after the effective date of this ordinance shall comply with the following regulations.

1.1 Authority and Purpose

This Solar Energy System ordinance is adopted in accordance with Town of Whitehall Local Law #7 of 1990 TITLE: Enacting Site Plan Review and Section 20 of the Municipal Home Rule Law of the State of New York. The purpose of this ordinance is to accommodate Solar Energy Systems and distributed generation resources in appropriate locations, while protecting the public's health, safety, and welfare.

Fees provided for by this Local Law shall be paid upon the submission of an application in such amount or amounts as shall be established by the Town Board from time to time, and such schedule of fees is on file with the Town Clerk at the time the application is made. The Town Board has the express authority to amend the schedule of fees by resolution.

In addition to the application fee and other fees listed on the schedule of fees adopted by the Town Board and on file with the Town Clerk, the Town of Whitehall is expressly authorized to require an escrow fee to cover the cost of professional review of any application made pursuant to this Local Law. The Town Board shall determine the amount of the escrow fee. The escrow fee shall be used to pay for the costs of professional review, including but not limited to engineering, architectural, legal, or other professional services. Such reimbursement of expenses shall also be in addition to any fees or costs associated with the State Environmental Quality Review Act (SEQRA), which are separate and distinct cost assessed to the applicant.

No application shall be deemed complete until all fees are paid and, if applicable, escrow is funded.

1.2 Definitions

The capitalized terms in the foregoing sentence, and as used throughout this Local Law, shall have the following meanings ascribed to them:

- 1.2.1 ACCESSORY USE. Any use of a structure, lot or portion thereof, that is customarily incidental and subordinate to and does not change the character of a principal land use or development, including the use of a residential structure for professional, commercial or artisan activities carried on by the resident of such a structure.

- 1.2.2 **ACCESSORY USE STRUCTURE.** Any structure or portion of a main structure customarily incidental and subordinate to a principal land use or development including a guest cottage for rent or hire that is incidental and subordinate to and associated with a single family dwelling or any movable structure in excess of 100 square feet that is located within a required shoreline setback.
- 1.2.3 **ACTIVE AGRICULTURAL LAND:** Land used for a Farm Operation in accordance with Agriculture and Markets Law § 301 – uses of which include production of crops, livestock, and livestock products – within the past five (5) years.
- 1.2.4 **APPLICANT-** All landowners and those claiming through or on behalf of the owner(s), whether by license, lease, easement, contract or by owner’s designation as an agent for purposes of making any application or any land use review or approval, whether for a permit or otherwise.
- 1.2.5 **BATTERY ENERGY STORAGE SYSTEM -** A rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems and associated electrical equipment designed mainly but not exclusively to store and distribute energy produced by a Commercial Solar or Wind Energy Facility. Battery Energy Storage Systems associated with an aggregate energy capacity greater than or equal to 600KWH are considered part of a Tier 4 Solar System under this Local Law and are therefore subject to the same Planning Board Requirements for Tier 4 Solar Energy Systems.
- 1.2.6 **BUILDING-INTEGRATED SOLAR ENERGY SYSTEM:** A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semi transparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.
- 1.2.7 **COMMERCIAL SOLAR ENERGY FACILITIES –** Any collection of solar panels which are designed to capture photons or sunlight and transform it into electricity and any and all related infrastructure, electrical lines, substations, access roads and accessory structures that cover more than ¼ acre of land, which are designed with the intent of producing electricity to be consumed off-site.
- 1.2.8 **COMMERCIAL WIND ENERGY FACILITIES–** Any individual or collection of Wind Turbine Generators designed to convert the kinetic energy in wind into a usable form of electricity, and any and all related infrastructure, electrical lines, substations access roads and accessory structures that cover more than ¼ acre of land, which are designed with the intent of producing electricity to be consumed off-site.
- 1.2.9 **FACILITY AREA:** The cumulative land area occupied during the commercial operation of the solar energy generating facility. This shall include all areas and equipment within the facility’s perimeter boundary – including the solar energy system, onsite interconnection equipment, onsite

electrical energy storage equipment, and any other associated equipment – as well as any site improvements beyond the facility’s perimeter boundary such as access roads, permanent parking areas, or other permanent improvements. The facility area shall not include site improvements established for impact mitigation purposes, including but not limited to vegetative buffers and landscaping features.

- 1.2.10 FARM OPERATION: Land and on-farm buildings, equipment, facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise (in accordance with Agriculture & Markets Law § 301[11]).
- 1.2.11 GLARE: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.
- 1.2.12 GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System which is secured to the ground via a pole, ballast system, or other mounting system; is detached from any other structure; and which generates electricity for onsite or offsite consumption.
- 1.2.13 KILOWATT (kW): A unit of power equal to 1,000 watts. The nameplate capacity of residential and commercial solar energy systems may be described in terms of kW.
- 1.2.14 LAND CLEARING. The excavation, cutting, removal, alteration, destruction or clearing of perennial or annual vegetation, including trees, or the disturbance of soil.
- 1.2.15 MEGAWATT (MW): A unit of power equal to 1,000 kW. The nameplate capacity of larger solar energy systems may be described in terms of MW.
- 1.2.16 MINERAL SOIL GROUPS 1-4 (MSG 1-4): Soils recognized by the New York State (NYS) Department of Agriculture and Markets as having the highest value based on soil productivity and capability, in accordance with the uniform statewide land classification system developed for the NYS Agricultural Assessment Program.
- 1.2.17 NAMEPLATE CAPACITY: A solar energy system’s maximum electric power output under optimal operating conditions. Nameplate Capacity may be expressed in terms of Alternating Current (AC) or Direct Current (DC).
- 1.2.18 NATIVE PERENNIAL VEGETATION: Native wildflowers, forbes, and grasses that serve as habitat, forage, and migratory way stations for Pollinators and shall not include any prohibited or regulated invasive species as determined by the NYS Department of Environmental Conservation.
- 1.2.19 ON-FARM SOLAR ENERGY SYSTEM: A Solar Energy System located on a farm which is a “farm operation” (as defined by Article 25-AA of the Agriculture and Markets Law, which may include one or multiple contiguous or non-contiguous parcels) in an agricultural district, which is designed, installed, and operated so that the anticipated annual total amounts of electrical energy generated do not exceed more than 110 percent of the anticipated annual total electrical energy consumed by the farm operation.

- 1.2.20 POLLINATOR: Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.
- 1.2.21 PLANNING BOARD. Pursuant to section 271 of the Town Law, the Town of Whitehall has created a "Planning Board". Said Board consists of five (5) members appointed by the Town Board in such manner and for such term as provided by Town Law. The Planning Board shall have all the powers and perform all the duties prescribed by statute and by this local law. The Planning Board shall have original jurisdiction for all matters pertaining to this Local Law.
- 1.2.22 RESIDENTIAL SOLAR ENERGY INSTALLATIONS – Any collection of solar panels which are designed to capture sunlight and transform it into electricity and require less than ¼ acre of land. This definition shall also include, for purposes of this local law, all traditional agricultural uses and alternative agricultural energy uses that are intended to principally generate power for the agricultural enterprise when located within a designated Agricultural District, or as otherwise protected or recognized under New York State Agriculture and Markets Law Article 25-AA, including, without limitation §305(3), §305(4) and §305-a therein, and all implementing regulations and rules, and further including policies therein implemented and hereby adopted relative to supporting traditional and generally acceptable farming practices, further including but not limited to heat recovery from composting systems, biogas recovery systems, anaerobic digester gas-to-electricity systems, and other alternative energy systems that significantly support or advance agriculture and agribusiness within the Town of Whitehall and its Agricultural Districts.
- 1.2.23 RESIDENTIAL WIND ENERGY INSTALLATIONS – Any wind turbine generator consisting of a wind turbine and tower, and associated control or conversion electronics, which has a rated capacity of not more than 100kW, and which is primarily intended to reduce consumption of utility power at that location, and requires less than ¼ acre of land. Residential Wind Energy Installations shall also include for purposes of this Local Law all traditional agricultural uses and alternative agricultural energy uses that are intended to principally generate power for the agricultural enterprise when located within a designated Agricultural District, or as otherwise protected or recognized under New York State Agriculture and Markets Law Article 25-AA, including, without limitation §305(3), §305(4) and §305-a therein, and all implementing regulations and rules, and further including policies therein implemented and hereby adopted relative to supporting traditional and generally acceptable farming practices, further including but not limited to heat recovery from composting systems, biogas recovery systems, anaerobic digester gas-to-electricity systems, and other alternative energy systems that significantly support or advance agriculture and agribusiness within the Town of Whitehall and its Agricultural Districts.
- 1.2.24 ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.
- 1.2.25 SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

1.2.26 SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduit, energy storage devices, or other electrical and photovoltaic equipment associated with the production and storage of electricity.

1.2.27 SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels, Battery Energy Solar Systems, and Solar Energy Equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3, or Tier 4 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

1. Roof-Mounted Solar Energy Systems.
2. Building-Integrated Solar Energy Systems.
3. Ground-Mounted Solar Energy Systems with a Nameplate Capacity of up to 25 kW AC. On-Farm Solar Energy Systems
4. Battery Energy Storage Systems with an aggregate energy capacity of less than 600KWH.

B. Tier 2 Solar Energy Systems include the following:

1. Ground-Mounted Solar Energy Systems not included under Tier 1 Solar Energy Systems with a Nameplate Capacity of up to 1 MW AC and which generate no more than 110% of the electricity consumed on the site over the previous 12 months.
2. Battery Energy Storage Systems with an aggregate energy capacity of less than 600KWH.

C. Tier 3 Solar Energy Systems include the following:

1. Ground-Mounted Solar Energy Systems not included under Tier 1 or Tier 2 Solar Energy Systems with a Nameplate Capacity of up to 5 MW AC.
2. Battery Energy Storage Systems with an aggregate energy capacity of less than 600KWH.

D. Tier 4 Solar Energy Systems are Solar Energy Systems which are not included under Tier 1, Tier 2, or Tier 3 Solar Energy Systems but which are less than 25 megawatts (MW). All Solar Energy Systems that are 25 MW or more are preempted from local zoning codes and require authorization and approval through the New York State Office of Renewable Energy Siting. Any Solar Energy System with a Battery Energy Storage System that has an aggregate energy capacity of 600 KWH or more is considered a Tier 4 Solar Energy System.

1.2.28 SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.

1.3 Applicability

A. The requirements of this Local Law shall apply to all Solar Energy Systems and Battery Energy Storage Systems permitted, installed, or modified in Whitehall after the effective date of this Local Law, excluding general maintenance and repair.

- B. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
- C. Modifications to an existing Solar Energy System that increase the Facility Area by more than 5% of the original Facility Area (exclusive of moving any fencing) shall be subject to this Local Law.

1.4 General Regulations

- 1.4.1 Battery Energy Storage Systems, Solar Energy System installations, and modifications of existing Solar Energy Systems require Planning Board approval prior to installation or modification.
- 1.4.2 The application for Planning Board Approval for a Solar Energy System installation or modification shall include, unless the provision is explicitly waived in writing:
 - 1.4.2.1 A drawing showing the location of the proposed Solar Energy System.
 - 1.4.2.2 The plan for screening a proposed Ground-mounted Solar Energy System from abutting properties and adjacent rights of way.
 - 1.4.2.3 Information indicating that the glare factor of the installation meets current industry standards used to minimize glare.
 - 1.4.2.4 The Solar Energy System will not materially endanger public health or safety.
 - 1.4.2.5 Solar Energy Systems shall comply with all current building, electric, fire and other safety codes, state and federal laws and regulations, local noise and other ordinances, and performance standards of this ordinance.
 - 1.4.2.6 Solar Energy System components must have UL certifications or equivalent Listings.
 - 1.4.2.7 Grid-connected Solar Energy Systems shall comply with the interconnection requirements of the local electric utility.
 - 1.4.2.8 Reasonable measures to minimize glare as viewed from adjacent properties and roads shall be taken.
 - 1.4.2.9 Solar Energy Systems shall be deemed to be abandoned if operations have been discontinued for more than 6 months. An abandoned Solar Energy System shall be removed, the solar panels safely and appropriately disposed of, and the site of Ground- mounted Solar Energy Systems restored within 6 months of abandonment.
 - 1.4.2.10 Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)] if applicable.
 - 1.4.2.11 All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Uniform Code”), NYS Energy Conservation Code (“Energy Code”) and all other relevant NYS and Federal laws having jurisdiction.
 - 1.4.2.12 For Solar Energy Systems, the Town shall impose, and may update as appropriate, a schedule of fees to recover expenses associated with engineering, environmental, or legal services determined to be reasonably necessary in the

processing of an application under this law. Additionally, pursuant to Section 1.1 of this Local Law, if the Town Requires, the standalone escrow account to pay for fees and professional review shall be established and funded at the time of application. No application shall be deemed complete prior to payment of the required fees and escrow funding.

1.4.2.13 All applicants and owners of permits issued by the Town of Whitehall shall provide accurate and up-to-date contact information, including full legal name, mailing address, physical address if different from the mailing address, primary phone number, and email address. Applicants and owners shall notify the Town Clerk in writing of any changes to their contact information within 30 days of said change. Owners and applicants shall file with the Town Clerk their contact information annually regardless of if there has been a change or not. A failure to provide accurate or updated contact information can result in the denial and or automatic revocation of any approved permit.

1.4.2.14 Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, as it is mandatory that the successor owner or operator assumes in writing all of the obligations of the decommissioning plan. A new owner or operator of the Solar Energy System shall notify the Town Clerk via certified mail return receipt requested of such change in ownership or operator within 30 days of the ownership change.

1.5 Planning Board Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems shall be permitted in the Town of Whitehall and shall be exempt from Planning Board review under the local land use regulations, subject to the following conditions for each type of Solar Energy Systems:

A. Roof-Mounted Solar Energy Systems

1. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements (exceptions may be approved by the Whitehall Town Planning Board):

- a. Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface and the highest edge of the system.
- b. Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
- c. Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
- d. Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.

2. Glare. All Solar Panels shall have anti-reflective coating(s).

3. Height. All Roof-Mounted Solar Energy Systems shall comply with the height limitations in Appendix 3.-

B. Building-Integrated Solar Energy Systems

Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

C. Ground-Mounted Solar Energy Systems

1. Glare. All Solar Panels shall have anti-reflective coating(s).
2. Setbacks. Tier 1 Solar Energy Systems shall be subject to the setback regulations specified for the accessory structures within the Town of Whitehall. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards in the Town of Whitehall.
3. Height. Tier 1 Solar Energy Systems shall comply with the height limitations in Appendix 3.
4. Lot Size. Tier 1 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the Town of Whitehall.
5. Lot Coverage. Tier 1 Solar Energy Systems are exempt from the lot coverage requirements in the Town of Whitehall.
6. Screening and Visibility.
 - a. All Tier 1 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable.
 - b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate Solar Access.

1.6 Planning Board Requirements for Tier 2 Solar Energy Systems

All Tier 2 Ground-Mounted Solar Energy Systems shall be permitted in the Town of Whitehall as accessory structures and shall be subject to Planning Board approval. Tier 2 Solar Energy Systems shall adhere to the standards and requirements established for Tier 1 Ground-Mounted Systems in Section 1.5(C), in addition to (or in some cases amended by) the following requirements set forth in this section.

A. Applications for the installation of Tier 2 Solar Energy System shall be:

1. Reviewed by the Town of Whitehall Planning Board for completeness. Applicants shall be advised within [30] days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
2. Subject to a public hearing to hear all comments for and against the application. This hearing shall be in compliance with all existing public hearing requirements established under law by the Town of Whitehall.
3. Referred to the Washington County Planning Board pursuant to General Municipal Law § 239-m if required.

4. Upon closing of the public hearing, the Town of Whitehall Planning Board shall take action on the application within 60-days of the public hearing, which can include approval, approval with conditions, or denial. The 60-day period may be extended upon consent by both the Town of Whitehall Planning Board and applicant.

B. Application & Site Plan Review Requirements. Applications for Tier 2 Solar Energy Systems, including materials for site plan review, shall include the following:

1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
2. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
3. Nameplate Capacity of the Solar Energy System (as expressed in kW or MW).
4. Designation for the parcel(s) of land comprising the Facility Area.
5. Property lines and physical features, including roads, for the project site.
6. Adjacent land uses on contiguous parcels within a certain radius of the site boundary.
7. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees, access roads, exterior lighting, signage, fencing, landscaping, and screening vegetation or structures.
8. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and overcurrent devices. The diagram should describe the location and layout of all Battery Energy Storage System components if applicable and should include applicable setback and other bulk and area standards.
9. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

C. Standards. Tier 2 Systems shall adhere to the following standards.

1. Lot Coverage. Tier 2 Solar Energy Systems are exempt from the lot coverage requirements in the Town of Whitehall.
2. Screening/Visibility. Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

3. Environmental Resources

- a. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.
- b. To the extent practicable, Tier 2 Solar Energy System Owners shall utilize and maintain native perennial vegetation to provide foraging habitat for pollinators in all appropriate areas within the Facility Area.
- c. Use integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance.

1.7 Planning Board Requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are permitted through the issuance of a Special Tier 3 Permit at a cost of \$10,000 within the Town of Whitehall, (subject to increase pursuant to local resolution for fee setting by the Town of Whitehall Town Board) and is subject to the following requirements:

A. Applications for the installation of Tier 3 Solar Energy System shall be:

1. Reviewed by the Town of Whitehall Planning Board for completeness. Applicants shall be advised within [30] days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
2. Subject to a public hearing to hear all comments for and against the application. This hearing shall be in compliance with all existing public hearing requirements established under law by the Town of Whitehall.
3. Referred to the Washington County Planning Board pursuant to General Municipal Law § 239-m if required.
4. Upon closing of the public hearing, the Town of Whitehall Planning Board shall take action on the application within 60-days of the public hearing, which can include approval, approval with conditions, or denial. The 60-day period may be extended upon consent by both the Town of Whitehall Planning Board and applicant.

B. Application & Special Tier 3 Review Requirements. Applications for Tier 3 Solar Energy Systems, shall include the following:

1. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
2. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
3. Nameplate Capacity of the Solar Energy System (as expressed in MW).

4. Designation for the parcel(s) of land comprising the Facility Area.
5. Property lines and physical features, including roads, for the project site.
6. Map(s) of MSG 1-4 soils and Active Agriculture Lands on the parcel(s) comprising the Facility Area and adjacent parcels.
7. Adjacent land uses on contiguous parcels within a certain radius of the site boundary.
8. Proposed changes to the landscape of the site, including site grading, vegetation clearing and planting, the removal of any large trees, access roads, exterior lighting, signage, fencing, landscaping, and screening vegetation or structures.
9. Erosion and sediment control and stormwater management plans prepared to NYS Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
10. A one- or three-line electrical diagram detailing the entire Solar Energy System layout, including the number of Solar Panels in each ground-mount array, solar collector installation, associated components, inverters, electrical interconnection methods, and utility meter, with all National Electrical Code compliant disconnects and over current devices. The diagram should describe the location and layout of all Battery Energy Storage System components if applicable and should include applicable setback and other bulk and area standards.
11. A preliminary equipment specification sheet that documents all proposed Solar Panels, system components, mounting systems, racking system details, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
12. A Property Operation and Maintenance Plan that describes continuing site maintenance, anticipated dual-use, and property upkeep, such as mowing and trimming.
13. A Decommissioning Plan [see Appendix 4] signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant. The decommissioning plan shall address the following:
 - a. The time required to decommission and remove the Solar Energy System and any ancillary structures.
 - b. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.
 - c. The cost of decommissioning and removing the Solar Energy System, as well as all necessary site remediation or restoration.
 - d. The provision of a decommissioning security which shall adhere to the following requirements:
 1. The deposit, executions, or filing with the Whitehall Clerk of cash, bond, or other form of security reasonably acceptable to the Whitehall attorney and/or engineer, shall be in

an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal.

The amount of the bond or security shall be 115% of the cost of removal and site restoration for the Tier 3 Solar Energy System and shall be revisited every 3 years and updated as needed to reflect any changes (due to inflation or other cost changes). The decommissioning amount shall be reduced by the amount of the estimated salvage value of the Solar Energy System or increased due to advancing labor costs.

2. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town of Whitehall, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

C. Special Tier 3 Permit Standards. Whitehall Town Planning Board may issue a Special Tier 3 Permit for a Tier 3 Solar Energy System only after it has found that all the following standards and conditions have been satisfied, in addition to the requirements in the previous sections:

1. Underground Requirements. All utility lines located outside of the Facility Area shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
2. Vehicular Paths. Vehicular paths within the Facility Area shall be designed in compliance with Uniform Code requirements to ensure emergency access, while minimizing the extent of impervious materials and soil compaction.
3. Signage.
 - a. No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
 - b. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
4. Glare. All Solar Panels shall have anti-reflective coating(s).

5. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
6. Multiple lots. At the discretion of the Town of Whitehall Planning Board, where a Tier 3 Solar Energy System's Facility Area comprises multiple lots (regardless of ownership by an individual or multiple participating landowners), the combined lots may be treated a single lot for the purposes of applying specific standards and requirements, including but not limited to setback requirements.
7. Lot size. The property on which the Tier 3 Solar Energy System is placed shall meet the lot size requirements in Appendix 1.
8. Setbacks. The Tier 3 Solar Energy Systems shall meet the parcel line setback requirements in Appendix 2, Table 2.1. Fencing, collection lines, access roads and landscaping may occur within the setback.
9. Height. The Their 3 Solar Energy Systems shall comply with the height limitations in Appendix 3 depending on the Town of Whitehall.
 - a. This height requirement can be waived by the Town of Whitehall Planning Board if the panels are being raised to accommodate continued or new agricultural purposes.
10. Lot Coverage. Tier 3 Solar Energy Systems are exempt from the lot coverage requirements in the Town of Whitehall.
11. Fencing Requirements. All mechanical equipment, including any structure for Battery Energy Storage System components, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
12. Screening and Visibility.
 - a. Solar Energy Systems smaller than 10 acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 - b. Solar Energy Systems larger than 10 acres shall be required to:
 1. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
 2. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.

- i. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system, following the applicable rules and standards established by the Town of Whitehall.
- ii. The Town of Whitehall Planning Board may elect to waive certain screening and landscaping requirements in select locations based on an applicant's demonstration of non-impact or impact mitigation on adjacent parcels.

13. Environmental Resources

- a. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.
- b. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing Native Perennial Vegetation and foraging habitat beneficial to game birds, songbirds, and Pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes and seed all appropriate areas within the Facility Area. Any project which is designed to incorporate agricultural or farm-related activities or uses within the Facility Area may be excluded from this requirement based on the amount of space actually occupied by the agricultural use(s). This exclusion will only be allowed based on the Town of Whitehall Planning Board determination that these lands are being used for actual agricultural uses.
- c. Use integrated pest management practices to refrain from/limit pesticide use (including herbicides) for long-term operation and site maintenance.

14. Agricultural Resources. Tier 3 Solar Energy Systems for which the Facility Area includes lands consisting of MSG 1-4 shall adhere to the following requirements:

- a. Tier 3 Solar Energy System components, equipment, and associated impervious surfaces shall occupy no more than 50% of the area of MSG 1-4 within the Facility Area.
 - 1. A Tier 3 Solar Energy System may exceed the 50% MSG 1-4 coverage threshold if it incorporates an onsite activity or program which provides for the use of the land as a Farm Operation. Exceedance beyond the 50% threshold will only be allowed based on the Town of Whitehall Planning Board's determination that the land is being used for a Farm Operation.
 - 2. Subject to discretion of the Town of Whitehall Planning Board, if the landowner demonstrates that – notwithstanding the classification as MSG 1-4 – the land cannot be profitably employed due to excessive wetness, rocky conditions or slopes, the land may be excluded from the calculation required by this section.

- b. To the maximum extent practicable, Tier 3 Solar Energy Systems located on MSG 1-4 shall be constructed, monitored, and decommissioned in accordance with the NYS Department of Agriculture and Markets' "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."

D. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, as it is mandatory that the successor owner or operator assumes in writing all of the obligations of the decommissioning plan. A new owner or operator of the Solar Energy System shall notify the Town Clerk, via certified mail, return receipt requested that of the change in ownership or operatory within thirty (30) days of the ownership change.

1.8 Planning Board Requirements for Tier 4 Solar Energy Systems

All Tier 4 Solar Energy Systems are permitted through the issuance of a Whitehall Solar Tier 4 Special Use Permit within the Town of Whitehall at a cost of \$12,000, and are subject to the Special Tier 3 permit application requirements established for Tier 3 Solar Energy Systems in Section 1.9, in addition to (or in some cases amended by) the following requirements:

A. Applications for Tier 4 Solar Energy Systems shall:

1. Be reviewed by the Town of Whitehall Compliance Officer and the Washington County Code Enforcement Officer for completeness. Applicants shall be advised within 60 days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

B. Pre-Application Meeting.

At least 60 days prior to the submission of an application, the Applicant shall conduct a pre-application meeting with the Town of Whitehall Planning Board to ensure all parties have clear expectations regarding any Whitehall requirements applicable to the proposed Solar Energy System. A written request for this purpose shall be sent to the Town of Whitehall Planning Board. Submission and review of the application shall not be delayed based on the failure of the Town of Whitehall Planning Board OR Town Supervisor of Whitehall to respond in a timely manner to a properly filed meeting request.

At the pre-application meeting, the Applicant must provide (1) a brief description of the proposed facility and its environmental setting, (2) a map of the proposed facility showing project components, (3) the proposed facility's anticipated impacts, (4) a designated contact person with telephone number, email address, and mailing address from whom information will be available going-forward basis, and (5) an anticipated application submission date.

C. Community Engagement Plan.

Applications for a Tier 4 Solar Energy System shall include a Community Engagement Plan detailing the applicant's proposed plans and strategies for ensuring adequate public awareness and encouraging community participation. Applicants are highly encouraged to discuss the contents and

details proposed in this plan with the Town of Whitehall Planning Board AND Town of Whitehall Supervisor prior to the submission of a formal application.

D. Special Use Permit Standards

1. Setbacks: Tier 4 Solar Energy Systems shall meet all applicable parcel line and other setback requirements as outlined in Appendix 2, Table 2.2. Fencing, collection lines, access roads and landscaping may occur within the setback.
2. Agricultural Resources: Tier 4 Solar Energy Systems for which the Facility Area includes Active Agricultural Lands shall adhere to the following requirements:
 - a. Tier 4 Solar Energy System components, equipment, and associated impervious surfaces shall occupy no more than 50% of the Active Agricultural Lands within the Facility Area.
 - i. A Tier 4 Solar Energy System may exceed the 50% Active Agricultural Land threshold if it incorporates an onsite activity or program which provides for the use of the land as a Farm Operation. Exceedance beyond the 50% threshold will only be allowed based on the Town of Whitehall Planning Board's determination that the land is being used for a Farm Operation.
 - b. To the maximum extent practicable, Tier 4 Solar Energy Systems located on Active Agricultural Lands shall be constructed, monitored, and decommissioned in accordance with the NYS Department of Agriculture and Markets' "Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands."

1.9 Safety

- A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 or 4 Solar Energy System is located in an ambulance district, the local ambulance corps.
- C. If a Battery Energy Storage System is included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town of Whitehall and any applicable federal, state, or county laws or regulations.
- D. Where deemed necessary by the Town of Whitehall Planning Board, the Applicant shall ensure emergency access to the Facility Area for local first responders by installing an emergency lock box or similar device, in a location subject to approval by the Fire Chief of the Town of Whitehall.

1.10 Permit Timeframe and Abandonment

- A. The Special Tier 3 and 4 Permits and approval for a Solar Energy System shall be valid for a period of 18 months, provided that a building permit is issued for construction AND construction is commenced. In the event construction is not completed in accordance with the final site plan – as may have been amended and approved – as required by the Town of Whitehall Planning Board, within 12 months, the applicant may request to extend the time to complete construction for an additional 12 months. Approval of a request to extend the time to complete construction shall not be unreasonably withheld by the Town of Whitehall. If the owner and/or operator fails to perform substantial construction within 18 months, the approvals shall expire, and the applicant must commence all permitting approvals for a new applicant.
- B. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 6 months, the Town of Whitehall may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 12 months of notification.
- C. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Whitehall may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

1.11 Enforcement

Any person who violates any of the provisions of this Local Law, or any of the conditions imposed by a permit issued pursuant hereto, shall be guilty of an offense and subject to a fine of not more than five hundred dollars (\$500.00), to be recovered by the Town in a civil action. Every person shall be deemed guilty of a separate offense for each week, or part thereof, such violation disobedience, omission, neglect or refusal shall continue.

1.12 Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

1.13 Appeals.

Any person aggrieved by a decision of the Town of Whitehall Planning Board may appeal the decision to the Town Board of the Town of Whitehall. Such appeal shall be made within sixty (60) days of a final decision of the Whitehall Planning Board. The appeal shall be on notice, via certified mail, return receipt requested, to the Town Clerk within the time period specified. The Notice of Appeal shall contain the decision being appealed and the reasoning set forth for such appeal. Thereafter, the Town Board of the Town of Whitehall shall have thirty (30) days to advise the aggrieved party of any additional information necessary to review the appeal. Upon satisfaction of the Whitehall Town Board that the appeal is complete, a hearing shall be scheduled within 30 days of a complete appeal. The appellant shall receive notice of the hearing at least fourteen (14) days prior to the date, and shall be present at the hearing, with any representation they desire. The Whitehall Town Board shall have thirty (30) days from the conclusion of the public hearing to render a decision. All decisions shall be in writing, and shall be deemed final upon mailing from the Town Clerk to the applicant.

2.1 Appendix 1: Lot Size Requirements

The following table displays the size requirements of the lot for Ground-Mounted Solar Energy Systems to be permitted. ***Table 1.1: Lot Size Requirements***

Parcel Usage	Tier 3 & 4
Residential	≥ 2 acres
Commercial / Business	≥ 5 acres
Industrial	N/A
Agricultural	≥ 10 acres

Key:

—: Not Allowed N/A: Not Applicable

2.2 Appendix 2: Setback Requirements

The following table provides parcel line setback requirements for Ground-Mounted Solar Energy Systems. Fencing, access roads and landscaping may occur within the setback.

Table 2.1: Parcel Line Setback Requirements for Tier 3 Solar Energy Systems

Tier 3

Parcel Usage	Front	Side	Rear
Residential	—	—	—
Commercial / Business	30'	15'	25'
Industrial	30'	15'	25'
Agricultural	30'	15'	25'

Key:

—: Not Allowed

Table 2.2: Parcel Line and Other Setback Requirements for Tier 4 Solar Energy Systems

Tier 4

Parcel Usage	Front	Side	Rear	Non-Participating Occupied
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Residence

Residential	—	—	—	—
Commercial / Business	50'	50'	50'	250'
Industrial	50'	50'	50'	250'
Agricultural	50'	50'	50'	250'

Key:

—: Not Allowed

2.3 Appendix 3: Height Requirements

The following table displays height requirements for each type of Solar Energy Systems. The height of systems will be measured from the highest natural grade below each Solar Panel. ***Table 3.1: Height Requirements***

Parcel Usage	Tier 1	Tier 1 & 2	Tier 3 & 4
	Roof-Mounted	Ground-Mounted	Ground-Mounted
Residential	2' above roof	10'	—
Commercial / Business	4' above roof	15'	20'
Industrial	4' above roof	15'	20'
Agricultural	2' above roof	15'	20'

Key:

—: Not Allowed

2.4 Appendix 4: Example Decommissioning Plan

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at: [Solar Project Address]

Prepared and submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by the Town of Whitehall, [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the “Facility”).

System decommissioning shall be required as a result of any of the following conditions:

1. The land lease – if any – ends, unless the project owner has acquired the land.
2. The Solar Energy System ceases to generate electricity on a continuous basis for [12] months.
3. The Solar Energy System is damaged and will not be repaired or replaced by [Solar Developer Owner].

If any of the above conditions are met, and upon notification or instruction by the Town of Whitehall, [Solar Developer Name] shall implement this decommissioning plan. System decommissioning and removal, as well as all necessary site restoration or remediation activities, shall be completed within [12] months.

The owner of the Facility, as provided for in its lease with the landowner, and in accordance with the requirements of the Town of Whitehall law, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which shall include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations located less than 36-inches below the soil surface, and/or less than 48-inches below the soil surface in areas consisting of [Mineral Soil Groups (MSG) 1-4 and/or Active Agricultural Lands].
2. For projects located on areas consisting of [MSG 1-4 and/or Active Agricultural Lands], removal of all operator owned equipment, concrete, conduits, structures, fencing, and foundations in accordance with the decommissioning requirements contained in the NYS Department of Agriculture and Markets’ “Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands.”
3. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state, and federal waste disposal regulations.
4. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

An appendix is included in this plan to provide a project schedule detailing a breakdown of tasks required for the decommissioning removal of the system, including:

1. Time required to decommission and remove the system and any ancillary structures.

2. Time required to repair any damage cause to the property by the installation and removal of the system.

The cost of system decommissioning and removal, as well as all necessary site remediation and restoration activities, is estimated to be \$[XXX] as of the date and time this application is filed. A decommissioning security [has been OR will be] executed in the amount of [115]% of the cost of system decommissioning, removal, and site restoration.

This cost estimate and decommissioning surety will be revisited every three (3) years and updated as needed to account for inflation or other cost changes.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature:

Date: